

processor, after such delivery to him within the State, does not affect the nature of the delivery to him as one made within the State.

EXEMPT TRANSPORTATION OF FRUIT OR  
VEGETABLE HARVEST EMPLOYEES

**§ 780.918 Requisites for exemption generally.**

Section 13(b)(16), in clause (B), provides an exemption from the minimum wage and overtime pay provisions of the Act for an employee during any workweek in which all the following conditions are satisfied:

(a) The employee must be engaged "in transportation" of harvest workers; and

(b) The harvest workers transported must be "persons employed or to be employed in the harvesting of fruits or vegetables"; and

(c) The employee's transportation of such harvest workers must be "between the farm and any point within the same State."

**§ 780.919 Engagement "in transportation" of harvest workers.**

In order for the exemption to apply, the employees must be engaged "in transportation" of the specified harvest workers between the points stated in the statute. Actual engagement "in transportation" of such workers is required. Engagement in other activities is not exempt work. Drivers, driver's helpers, and others who are engaged in the actual movement of the persons transported may qualify for the exemption. Office employees, garage mechanics, and other employees of the employer who may perform supporting activities but do not engage in the actual transportation work do not come within the exemption. There is no restriction in the statute as to the means of conveyance used; the exempt transportation may be by land, air, or water in any vehicle or conveyance appropriate for the purpose. Employees of any employer who are engaged in the specified transportation activities may qualify for exemption; it is not necessary that the transportation be performed by the farmer. (See § 780.905.)

**§ 780.920 Workers transported must be fruit or vegetable harvest workers.**

Clause (B) of section 13(b)(16) exempts only those transportation employees who are engaged in transportation "of persons employed or to be employed in the harvesting of fruits or vegetables." Transportation of harvest workers is not exempt unless the workers are fruit and vegetable harvest workers; transportation of workers employed or to be employed in harvesting or other commodities is not exempt work under section 13(b)(16). *Wirtz v. Osceola Farms Co.*, 372 F. (2d) 584 (C.A. 5). Nor does the exemption apply to the transportation of persons for the purpose of planting or cultivating any crop, whether or not it is a fruit or a vegetable crop.

**§ 780.921 Persons "employed or to be employed" in fruit or vegetable harvesting.**

The exemption applies to the transportation of persons "employed or to be employed" in the harvesting of fruits or vegetables. Included in this phrase are persons who at the time of transportation are currently employed in harvesting fruits or vegetables and others who, regardless of their occupation at such time, are being transported to be employed in such harvesting. The conveying of persons to a farm from a factory, packinghouse or processing plant would be exempt where their transportation is for the purpose of their employment in harvesting the named commodities. On the other hand, the transportation of harvest workers, who have been employed in the fruit or vegetable harvest, to such a plant for the purpose of their employment in the plant would not be exempt. The transportation must come within the intended scope of section 13(b)(16) which is to provide exemption for "transportation of the harvest crew to and from the farm" (see 107 Cong. Rec. daily ed. p. 4523).

**§ 780.922 "Harvesting" of fruits or vegetables.**

Only transportation of employees employed or to be employed in the "harvesting" of fruits or vegetables is exempt under clause (B) of section 13(b)(16). As indicated in § 780.920, such